

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)  
HAWAIIAN ELECTRIC COMPANY, INC. )  
To Modify its Rule 14 to Establish )  
Interconnection Standards and to )  
Require an Interconnection )  
Agreement for Distributed )  
Generating Facilities. )  
Transmittal No. 02-01. )

DOCKET NO. 02-0051  
(CONSOLIDATED)

In the Matter of the Application of)  
HAWAII ELECTRIC LIGHT COMPANY, INC. )  
To Modify its Rule 14 to Establish )  
Interconnection Standards and to )  
Require an Interconnection )  
Agreement for Distributed )  
Generating Facilities. )  
Transmittal No. 02-02H. )

In the Matter of the Application of)  
MAUI ELECTRIC COMPANY, LIMITED )  
To Modify its Rule 14 to Establish )  
Interconnection Standards and to )  
Require an Interconnection )  
Agreement for Distributed )  
Generating Facilities. )  
Transmittal No. 02-01M. )

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ATTEST: A True Copy  
KAREN HIGASHI  
Chief Clerk, Public Utilities  
Commission, State of Hawaii.

*K. Higashi*

DECISION AND ORDER NO. 20056

Filed March 6, 2003  
At 8:00 o'clock A.M.

*Karen Higashi*  
Chief Clerk of the Commission

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DECISION AND ORDER

I.

By Decision and Order No. 19773, filed on November 15, 2002, the commission conditionally approved the joint submission filed on September 23, 2002, by HAWAIIAN ELECTRIC COMPANY, INC., HAWAII ELECTRIC LIGHT COMPANY, INC. (HELCO), MAUI ELECTRIC COMPANY, LIMITED (collectively, "utilities"), and the Department

of Commerce and Consumer Affairs, Division of Consumer Advocacy (Consumer Advocate) (collectively, "parties"), subject to certain observations.<sup>1</sup> The commission instructed the utilities to submit their respective tariffs:

. . . incorporating any revisions made resulting from (A) their review of the commission's observations; and (B) the Consumer Advocate's consent thereto. The respective transmittal letters shall describe with particularity the utilities' responses to each of the commission's observations. Upon review of these tariffs, further commission action will follow.

In compliance thereto, the parties, on February 19, 2003, jointly submitted their agreed upon revisions (hereinafter, "joint revised submission"). The parties: (1) state that the revisions incorporated in the joint submission are reasonable; and (2) propose an effective date of March 21, 2003.

## II.

The utilities' revisions to each of the commission's observations are discussed below.

### A.

Rule 14(H)(2)(a) initially required existing customers with on-site distributed generating facilities to execute an agreement with the utility within 60 days following the effective date of Rule 14(H). In addition, Rule 14(H) did not include any

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<sup>1</sup>The joint submission consists of: (1) modifications to Rule 14, consisting of a paragraph H; (2) interconnection standards (Appendix I to Rule 14); (3) the standard interconnection agreement (Appendix II to Rule 14); and (4) interconnection procedures (Appendix III to Rule 14).

The commission set forth its observations in Section III of Decision and Order No. 19773.

grandfather provision that exempted customers already operating in parallel with the utility's system, from the potential need for additional technical studies, to the extent technically feasible and reasonable.

In the joint revised submission, the utilities propose to change the 60-day time limit to 150 days, followed by a 30-day period for customers to file a request for an extension of time with the commission, upon a finding of good cause shown. Thus, customers may ultimately have 150 days or more to execute an agreement with the respective utilities.

The utilities also propose to include, in Appendix III, a phrase stating that, on the effective date of Rule 14, as revised, existing customers already operating in parallel with the utilities' systems will not be charged for any additional technical studies.

#### B.

The commission expressed concern with the: (1) one-year contractual term set forth in the initial standard interconnection agreement; and (2) utilities' right to terminate the agreement, without just cause.

The joint revised submission removes the one-year contractual limit, and now states that the agreement "shall continue in effect until terminated[,]" and that the agreement is subject to termination by the utility or customer upon the

occurrence of certain events.<sup>2</sup> The utilities state that the specified occurrences are substantially based on the standard interconnection agreement adopted by the Public Utility Commission of Texas.

C.

In response to the commission's observations of the dispute resolution procedures, the joint revised submission now makes clear that the customer, at any time during the interconnection process, has the option of seeking relief with the commission via the complaint process.

D.

The commission encouraged the utilities to consider establishing reasonable target dates for the numerous steps

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<sup>2</sup>Specifically:

1. The customer may terminate at any time, by giving the utility at least 60 days written notice, provided that the facility is disconnected from the utility's system and no longer operating in parallel at the time of termination.
2. The utility may terminate upon the customer's failure to generate energy from the facility in parallel with the utility's system within 12 months after completion of the interconnection.
3. Either party may terminate upon at least 30 days prior written notice that the other party is in default of any material terms or conditions, provided that the notice specifies the basis for the termination and there is a reasonable opportunity to cure the default.
4. The utility may terminate if the facility is removed from permanent service.
5. The utility may terminate upon at least 60 days prior written notice "in the event that there is a material change in an applicable statute, rule or tariff."

involved in the interconnection process. In response thereto, the joint revised submission now includes a 15-day target to complete the identification of the interconnection facilities owned by the utility.

The utilities state that they were unable to develop target dates for certain other steps, due to a number of reasons:

1. Some of these steps involve variables of which the utilities have no control over, making it impractical to identify a reasonable target date to complete the utilities' actions.
2. Also, "where the completion of the step is contingent upon customers completing an action[,] since the [utilities] will not have any control over how long the customer will take to complete an action."

E.

The utilities concur with the commission's expressed optimism that, in the future, a more streamlined and less stringent interconnection process will result. In this respect, the utilities "will continue to review and monitor the customer interconnection requirements set forth in the joint submission to determine if adjustments to the requirements are technically feasible and warranted."

That said, the utilities explain that the 10 per cent peak feeder load threshold that triggers the need for additional technical study was developed based on the recommendation of its independent consultants. With the available peak feeder load information, the utilities chose to use 10 per cent of the peak feeder load "as the threshold to flag potential problems that may require additional technical study." In addition, the utilities note that the 10 per cent peak feeder load threshold "can be less

restrictive than the higher percentage penetration threshold used in other jurisdictions."

Accordingly, the utilities believe that: (1) the 10 per cent feeder penetration threshold represents a reasonable starting point to trigger the need for additional technical study; and (2) no change is necessary at this time.

### III.

The utilities, on their own, propose certain changes as a result of HELCO's recent experience negotiating interconnection agreements with the Hawaii Health Systems Corporation (HHSC) for the Hilo and Kona community hospitals.

The utilities propose to revise the *force majeure* provision of the standard interconnection agreement, such that this provision mutually applies to the benefit of both parties to the agreement, and not exclusively to the utility.<sup>3</sup>

The utilities also seek an order confirming their ability to remove the cross-indemnification provision from the standard interconnection agreement for customers that are governmental agencies.<sup>4</sup>

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<sup>3</sup>A *force majeure* clause is "[a] contractual provision allocating the risk if performance becomes impossible or impracticable as a result of an event or effect that the parties could not have anticipated or controlled." *Black's Law Dictionary* (7<sup>th</sup> ed. 1999) at 657.

<sup>4</sup>The utilities explain that in HELCO's negotiations with HHSC, the State Department of Attorney General took the position that "state agencies, such as HHSC, could not enter into an agreement that included the proposed Indemnification clause, because state agencies do not have legislative authority or power to indemnify their contractors." Accordingly, HELCO removed the indemnification provision from the interconnection agreements with HHSC.

#### IV.

Upon thorough review, the commission finds that the parties' joint revised submission, taken as a whole, adequately addresses the observations made by the commission in Decision and Order No. 19773. In addition, the commission finds reasonable the two changes independently proposed by the utilities.

As stated in section IV.D of Decision and Order No. 19773:

The commission recognizes that distributed generation/interconnection is an evolving, "work in progress" in this State. The parties' joint [revised] submission represents a step forward, with the goal of improving and streamlining the interconnection process.

The commission will approve as reasonable the joint revised submission.

#### V.

##### THE COMMISSION ORDERS:

1. The parties' joint revised submission, filed on February 19, 2003, is approved, effective from March 21, 2003. The utilities shall promptly file their revised tariffs sheets (including Appendices I, II, and III) with the commission, with two copies served on the Consumer Advocate.

2. The utilities' request to remove the cross-indemnification provision from the standard interconnection agreement for customers that are governmental agencies, is approved, to the extent applicable.

3. Unless ordered otherwise, the utilities shall continue to submit to the commission and Consumer Advocate the quarterly and annual reports set forth in section III of Decision




and Order No. 19773. The Consumer Advocate, in turn, may submit its comments in response to any of the utility's reports.

DONE at Honolulu, Hawaii this 6th day of March, 2003.


PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Wayne H. Kimura, Chairman

By   
Janet E. Kawelo, Commissioner

By (RECUSED)  
Gregg J. Kinkley, Commissioner

APPROVED AS TO FORM:

  
Michael Azama  
Commission Counsel

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CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 20056 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
DIVISION OF CONSUMER ADVOCACY  
P. O. Box 541  
Honolulu, HI 96809

WILLIAM A. BONNET  
VICE PRESIDENT, GOVERNMENT AND COMMUNITY AFFAIRS  
HAWAIIAN ELECTRIC COMPANY, INC.  
P. O. Box 2750  
Honolulu, HI 96840

WARREN H. W. LEE, PRESIDENT  
HAWAII ELECTRIC LIGHT COMPANY, INC.  
P. O. Box 1027  
Hilo, HI 96721-1027

EDWARD L. REINHARDT, PRESIDENT  
MAUI ELECTRIC COMPANY, LIMITED  
P.O. Box 398  
Kahului, HI 96733-6898

THOMAS W. WILLIAMS, JR., ESQ.  
GOODSILL, ANDERSON, QUINN & STIFEL  
1800 Alii Place  
1099 Alakea Street  
Honolulu, HI 96813

Attorney for HECO, HELCO and MECO

  
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Karen Higashi

DATED: March 6, 2003